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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,209

03/16/2005

Elaine Stephen

8830-328US1 (208102)

4545

23973

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07/03/2007

DRINKER BIDDLE & REATH

ATTN: INTELLECTUAL PROPERTY GROUP

ONE LOGAN SQUARE

18TH AND CHERRY STREETS

PHILADELPHIA, PA 19103-6996

EXAMINER

THOMAS, ALEXANDER S

ART UNIT

PAPER NUMBER

1772

MAIL DATE

DELIVERY MODE

07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,209

Applicant(s)

STEPHEN, ELAINE

Examiner

Alexander Thomas

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/21/07 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 7, 9, 10 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Yaeger et al 6,435,931. The reference discloses a restraining apparatus for coupling at least two users comprising a spine 18 and at least two lateral extensions 24 adapted to couple respective users, wherein the spine includes stiffening members (the projections on spine 18 in Figure 2) which would inherently make the spine more rigid in a vertical plane than in the lateral plane. Furthermore, the flat elongated shape

of the spine 18 in Yeager inherently makes the spine more flexible in a lateral plane than in a vertical plane.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager et al in view of Nero 3,563,208. The primary reference discloses the invention substantially as claimed; see the above rejection in paragraph 3. However, it does not disclose incorporating light emitting material in its product. Nero discloses the use of luminous material on tether apparatus in order to enable the users to be seen in the dark; see column 4, lines 21-26. It would have been obvious to one of ordinary skill in the art to apply luminous material to the apparatus of the primary reference in view of the teaching in the secondary reference in order to safely use the product in the dark.

6. Claims 8, 11, 12, 13, 15, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager et al in view of Nero and Nadeau 3,563,208. The primary reference discloses the invention substantially as claimed, namely a restraining apparatus for coupling at least two users comprising a spine 18 and at least two lateral extensions 24 adapted to couple respective users, wherein the spine includes stiffening

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members (the projections on spine 18 in Figure 2) which would inherently make the spine more rigid in a vertical plane than in the lateral plane. The primary reference also discloses that harnessing devices are known in the art (see column 1, lines 12-38) but does not teach the use of releasable restraints, pivotable extensions or harnesses on his device. Therefore, one skilled in the art would appreciate that these type of harness devices could be used in combination with the product of Yeager to produce a more secure management of the children if one was willing to tolerate the less desirable features of the harnesses. The secondary references teach the use of releasable pivotable extensions and harnesses; see the Figures. It would have been obvious to one of ordinary skill in the art to use harnesses, releasable attachment means and pivotable attachment means in the product of the primary reference in view of the teachings in the secondary references in order to securely control the child being restrained and to allow the child a degree of movement while still being tethered. Concerning claim 13, it would have been obvious to one of ordinary skill in the art to provide extensions on both sides of the spine in the product of the primary reference since a shift in the location of parts is within the general skill of a worker in the art.

Response to Arguments

7. Applicant's arguments have been considered but are not deemed persuasive. Initially, applicant argues that the projections on the spine of the Yeager product are purely decorative and no technical function has been ascribed to the projections. However, it is the examiner's position that the projections would inherently stiffen the

spine of the Yeager product irrespective of their intended use. Furthermore, the flat elongated shape of the spine in Yeager inherently makes the product more flexible in a lateral plane than in a vertical plane. Applicant also argues that the Yeager product is not a restraining apparatus and teaches away from any kind of restraint. However, this is not convincing. The term "restraining apparatus" does not define any specific structural feature of the product and, therefore, does not provide any patentably distinguishing feature. Furthermore, the product in Yeager can be considered a restraining apparatus in view of the disclosure of the product having "compartments for containing persons" or "compartments for holding children"; see column 2, lines 48-52. Applicant further argues that the lateral extensions 24 in the Yeager product are not "attachment members" and are not "adapted to couple" respective users to the spine. However, this also is not convincing since the term "attachment members adapted to couple ... users to the spine member" in claim 1 does not set forth any particular structural features that distinguish over the product of Yeager. Furthermore, the lateral members 24 in the Yeager product include a means 28 that is adapted to couple users to the spine, namely by the user grabbing the handle 28 formed in lateral members. Regarding claim 18, Yeager et al disclose that the use of harnessing devices was well-known in the art (column 1, lines 12-38) but provided problems such as entanglement, pinching, etc. Therefore, one skilled in the art would appreciate that these type of harness devices could be used in combination with the product of Yeager to produce a more secure management of the children if one was willing to tolerate the less desirable features of the harnesses.

Conclusion

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Alexander S. Thomas".

ALEXANDER S. THOMAS
PRIMARY EXAMINER